PUBLIC LAW 99-339—JUNE 19, 1986

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SAFE DRINKING WATER ACT AMENDMENTS OF 1986

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Public Law 99-339
99th Congress

An Act

June 19, 1986
[S. 124]

To amend the Safe Drinking Water Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Safe Drinking Water Act Amendments of 1986.
Pollution.
42 USC 201 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Safe Drinking Water Act Amendments of 1986".

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TITLE I—PUBLIC WATER SYSTEMS

SEC. 101. NATIONAL PRIMARY DRINKING WATER REGULATIONS.

42 USC 300g-1.

(a) SIMPLIFICATION OF STATUTORY SYSTEM.—Section 1412(a) of the Safe Drinking Water Act (title XIV of the Public Health Service Act; 42 U.S.C. 300f and following) is amended to read as follows:

"(a)(1) Effective on the enactment of the Safe Drinking Water Act Amendments of 1986, each national interim or revised primary drinking water regulation promulgated under this section before such enactment shall be deemed to be a national primary drinking water regulation under subsection (b). No such regulation shall be required to comply with the standards set forth in subsection (b)(4) unless such regulation is amended to establish a different maximum contaminant level after the enactment of such amendments.

"(2) After the enactment of the Safe Drinking Water Act Amendments of 1986 each recommended maximum contaminant level published before the enactment of such amendments shall be treated as a maximum contaminant level goal.

"(3) Whenever a national primary drinking water regulation is proposed under paragraph (1), (2), or (3) of subsection (b) for any contaminant, the maximum contaminant level goal for such contaminant shall be proposed simultaneously. Whenever a national primary drinking water regulation is promulgated under paragraph (1), (2), or (3) of subsection (b) for any contaminant, the maximum contaminant level goal for such contaminant shall be published simultaneously.

"(4) Paragraph (3) shall not apply to any recommended maximum contaminant level published before the enactment of the Safe Drinking Water Act Amendments of 1986.".

(b) STANDARD SETTING SCHEDULES AND DEADLINES.—Section 1412(b) of the Safe Drinking Water Act is amended by striking paragraphs (1), (2), and (3), and inserting in lieu thereof the following: 42 USC 300g-1.

"(1) In the case of those contaminants listed in the Advance Notice of Proposed Rulemaking published in volume 47, Federal Register, page 9352, and in volume 48, Federal Register, page 45502, the Administrator shall publish maximum contaminant level goals and promulgate national primary drinking water regulations—

"(A) not later than 12 months after the enactment of the Safe Drinking Water Act Amendments of 1986 for not less than 9 of those listed contaminants;

"(B) not later than 24 months after such enactment for not less than 40 of those listed contaminants; and

"(C) not later than 36 months after such enactment for the remainder of such listed contaminants.

"(2)(A) If the Administrator identifies a drinking water contaminant the regulation of which, in the judgment of the Administrator, is more likely to be protective of public health (taking into account the schedule for regulation under paragraph (1)) than a contaminant referred to in paragraph (1), the Administrator may publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for such identified contaminant in lieu of regulating the contaminant referred to in such paragraph. There may be no more than 7 contaminants in paragraph (1) for which substitutions may be made. Regulation of a contaminant identified under this paragraph shall be in accordance with the schedule applicable to the contaminant for which the substitution is made.

"(B) If the Administrator identifies one or more contaminants for substitution under this paragraph, the Administrator shall publish in the Federal Register not later than one year after the enactment of the Safe Drinking Water Act Amendments of 1986 a list of contaminants proposed for substitution, the contaminants referred to in paragraph (1) for which substitutions are to be made, and the basis for the judgment that regulation of such proposed substitute contaminants is more likely to be protective of public health (taking into account the schedule for regulation under such paragraph). Following a period of 60 days for public comment, the Administrator shall publish in the Federal Register a final list of contaminants to be substituted and contaminants referred to in paragraph (1) for Federal Register, publication.

which substitutions are to be made, together with responses to significant comments.

"(C) Any contaminant referred to in paragraph (1) for which a substitution is made, pursuant to subparagraph (A) of this paragraph, shall be included on the priority list to be published by the Administrator not later than January 1, 1988, pursuant to paragraph (3)(A).

Health and medical care.

"(D) The Administrator's decision to regulate a contaminant identified pursuant to this paragraph in lieu of a contaminant referred to in paragraph (1) shall not be subject to judicial review.

"(3)(A) The Administrator shall publish maximum contaminant level goals and promulgate national primary drinking water regulations for each contaminant (other than a contaminant referred to in paragraph (1) or (2) for which a national primary drinking water regulation was promulgated) which, in the judgment of the Administrator, may have any adverse effect on the health of persons and which is known or anticipated to occur in public water systems. Not later than January 1, 1988, and at 3 year intervals thereafter, the Administrator shall publish a list of contaminants which are known or anticipated to occur in public water systems and which may require regulation under this Act.

"(B) For the purpose of establishing the list under subparagraph (A), the Administrator shall form an advisory working group including members from the National Toxicology Program and the Environmental Protection Agency's Offices of Drinking Water, Pesticides, Toxic Substances, Ground Water, Solid Waste and Emergency Response and any others the Administrator deems appropriate. The Administrator's consideration of priorities shall include, but not be limited to, substances referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and substances registered as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act.

42 USC 9601.
7 USC 136 note.

"(C) Not later than 24 months after the listing of contaminants under subparagraph (A), the Administrator shall publish proposed maximum contaminant level goals and national primary drinking water regulations for not less than 25 contaminants from the list established under subparagraph (A).

"(D) Not later than 36 months after the listing of contaminants under subparagraph (A), the Administrator shall publish a maximum contaminant goal and promulgate a national primary drinking water regulation for those contaminants for which proposed maximum contaminant level goals and proposed national primary drinking water regulations were published under subparagraph (C).

"(4) Each maximum contaminant level goal established under this subsection shall be set at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety. Each national primary drinking water regulation for a contaminant for which a maximum contaminant level goal is established under this subsection shall specify a maximum level for such contaminant which is as close to the maximum contaminant level goal as is feasible.

Health and medical care.

"(5) For the purposes of this subsection, the term 'feasible' means feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purpose of paragraph (4), granular activated carbon is feasible for

the control of synthetic organic chemicals and any technology, treatment technique, or other means found to be the best available for the control of synthetic organic chemicals must be at least as effective in controlling synthetic organic chemicals as granular activated carbon.

"(6) Each national primary drinking water regulation which establishes a maximum contaminant level shall list the technology, treatment techniques, and other means which the Administrator finds to be feasible for purposes of meeting such maximum contaminant level, but a regulation under this paragraph shall not require that any specified technology, treatment technique, or other means be used for purposes of meeting such maximum contaminant level. Science and technology.

"(7)(A) The Administrator is authorized to promulgate a national primary drinking water regulation that requires the use of a treatment technique in lieu of establishing a maximum contaminant level, if the Administrator makes a finding that it is not economically or technologically feasible to ascertain the level of the contaminant. In such case, the Administrator shall identify those treatment techniques which, in the Administrator's judgment, would prevent known or anticipated adverse effects on the health of persons to the extent feasible. Such regulations shall specify each treatment technique known to the Administrator which meets the requirements of this paragraph, but the Administrator may grant a variance from any specified treatment technique in accordance with section 1415(a)(3). 42 USC 300g-4.

"(B) Any schedule referred to in this subsection for the promulgation of a national primary drinking water regulation for any contaminant shall apply in the same manner if the regulation requires a treatment technique in lieu of establishing a maximum contaminant level.

"(C)(i) Not later than 18 months after the enactment of the Safe Drinking Water Act Amendments of 1986, the Administrator shall propose and promulgate national primary drinking water regulations specifying criteria under which filtration (including coagulation and sedimentation, as appropriate) is required as a treatment technique for public water systems supplied by surface water sources. In promulgating such rules, the Administrator shall consider the quality of source waters, protection afforded by watershed management, treatment practices (such as disinfection and length of water storage) and other factors relevant to protection of health.

"(ii) In lieu of the provisions of section 1415 the Administrator shall specify procedures by which the State determines which public water systems within its jurisdiction shall adopt filtration under the criteria of clause (i). The State may require the public water system to provide studies or other information to assist in this determination. The procedures shall provide notice and opportunity for public hearing on this determination. If the State determines that filtration is required, the State shall prescribe a schedule for compliance by the public water system with the filtration requirement. A schedule shall require compliance within 18 months of a determination made under clause (iii). State and local governments.

"(iii) Within 18 months from the time that the Administrator establishes the criteria and procedures under this subparagraph, a State with primary enforcement responsibility shall adopt any necessary regulations to implement this subparagraph. Within 12 months of adoption of such regulations the State shall make deter- State and local governments.

minations regarding filtration for all the public water systems within its jurisdiction supplied by surface waters.

State and local governments.

"(iv) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to make the determination in clause (ii) in such State as the State would have under that clause. Any filtration requirement or schedule under this subparagraph shall be treated as if it were a requirement of a national primary drinking water regulation.

"(8) Not later than 36 months after the enactment of the Safe Drinking Water Act Amendments of 1986, the Administrator shall propose and promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems. The Administrator shall simultaneously promulgate a rule specifying criteria that will be used by the Administrator (or delegated State authorities) to grant variances from this requirement according to the provisions of sections 1415(a)(1)(B) and 1415(a)(3). In implementing section 1442(g) the Administrator or the delegated State authority shall, where appropriate, give special consideration to providing technical assistance to small public water systems in complying with the regulations promulgated under this paragraph.".

42 USC 300g-4.
Post, p. 651.
State and local governments.

(c) CONFORMING CHANGES.—(1) Paragraphs (4), (5), and (6) of section 1412(b) of the Safe Drinking Water Act are redesignated as paragraphs (9), (10), and (11), respectively. Paragraphs (9) and (10) of such section 1412(b), as redesignated by this paragraph, are each amended by striking "Revised national" in each place where it appears and substituting "National".

42 USC 300g-1.

42 USC 300g-2.

(2) Paragraph (1) of section 1413(a) of such Act is amended by striking out subparagraphs (A) and (B) and substituting "are no less stringent than the national primary drinking water regulations in effect under sections 1412(a) and 1412(b);".

42 USC 300j-3.

(3) Section 1444(d) of such Act is amended by striking out "(including interim regulations)".

42 USC 300g-5.

(4) Section 1416(e) of the Safe Drinking Water Act is amended by striking out "1412(b)(3)" and substituting "1412(b)".

Federal Register, publication.

(d) REVIEW OF STANDARDS.—Paragraph (9) of section 1412(b) of the Safe Drinking Water Act, as redesignated by subsection (c) of this section, is amended by adding at the end thereof the following: "Such review shall include an analysis of innovations or changes in technology, treatment techniques or other activities that have occurred over the previous 3-year period and that may provide for greater protection of the health of persons. The findings of such review shall be published in the Federal Register. If, after opportunity for public comment, the Administrator concludes that the technology, treatment techniques, or other means resulting from such innovations or changes are not feasible within the meaning of paragraph (5), an explanation of such conclusion shall be published in the Federal Register.".

(e) SCIENCE ADVISORY BOARD.—Section 1412(e) of the Safe Drinking Water Act is amended to read as follows:

"(e) The Administrator shall request comments from the Science Advisory Board (established under the Environmental Research, Development, and Demonstration Act of 1978) prior to proposal of a maximum contaminant level goal and national primary drinking water regulation. The Board shall respond, as it deems appropriate, within the time period applicable for promulgation of the national primary drinking water standard concerned. This subsection shall,

42 USC 4361a.

under no circumstances, be used to delay final promulgation of any national primary drinking water standard.".

SEC. 102. ENFORCEMENT OF REGULATIONS.

(a) NOTICE TO SYSTEMS.—Section 1414(a)(1)(A) of the Safe Drinking Water Act is amended by inserting "and such public water system" after the words "notify the State". 42 USC 300g-3.

(b) PROMPT FEDERAL ENFORCEMENT.—(1) Section 1414(a)(1)(B) of the Safe Drinking Water Act is amended to read as follows:

"(B) If, beyond the thirtieth day after the Administrator's notification under subparagraph (A), the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (g) requiring the public water system to comply with such regulation or requirement or the Administrator shall commence a civil action under subsection (b).". State and local governments.

(2) Section 1414(a)(2) of the Safe Drinking Water Act is amended by striking the words "he may commence a civil action under subsection (b)" and substituting the following: "the Administrator shall issue an order under subsection (g) requiring the public water system to comply with such regulation or requirement or the Administrator shall commence a civil action under subsection (b)".

(c) PENALTIES.—Section 1414(b) of the Safe Drinking Water Act is amended as follows:

(1) Add ", with an order issued under subsection (g)," after "drinking water regulation" in the first sentence.

(2) Delete "willful" immediately after "there has been a" in the second sentence.

(3) Strike out "$5,000" and substitute "$25,000".

(d) ADMINISTRATIVE ORDERS.—(1) Section 1414 of the Safe Drinking Water Act is amended by adding at the end thereof the following new subsection:

"(g)(1) In any case in which the Administrator is authorized to bring a civil action under this section or under section 1445 with respect to any regulation, schedule, or other requirement, the Administrator also may issue an order to require compliance with such regulation, schedule, or other requirement. 42 USC 300j-4.

"(2) An order issued under this subsection shall not take effect until after notice and opportunity for public hearing and, in the case of a State having primary enforcement responsibility for public water systems in that State, until after the Administrator has provided the State with an opportunity to confer with the Administrator regarding the proposed order. A copy of any order proposed to be issued under this subsection shall be sent to the appropriate State agency of the State involved if the State has primary enforcement responsibility for public water systems in that State. Any order issued under this subsection shall state with reasonable specificity the nature of the violation. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be issued to appropriate corporate officers. State and local governments.

"(3)(A) Any person who violates, or fails or refuses to comply with, an order under this subsection shall be liable to the United States for a civil penalty of not more than $25,000 per day of violation.

"(B) Whenever any civil penalty sought by the Administrator under this paragraph does not exceed a total of $5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5 of the United States Code.

"(C) Whenever any civil penalty sought by the Administrator under this paragraph exceeds $5,000, the penalty shall be assessed by a civil action brought by the Administrator in the appropriate United States district court (as determined under the provisions of title 28 of the United States Code).

"(D) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Administrator, the Attorney General shall recover the amount for which such person is liable in any appropriate district court of the United States. In any such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.".

Ante, p. 647.

(2) Section 1414 of the Safe Drinking Water Act is amended by striking the words "FAILURE BY STATE TO ASSURE" from the section heading.

SEC. 103. PUBLIC NOTIFICATION.

Regulations.
Health and medical care.
42 USC 300g-3.

Section 1414(c) of the Safe Drinking Water Act is amended by striking everything after the sentence "The Administrator shall by regulation prescribe the form, manner, and frequency for giving notice under this subsection." and inserting the following: "Within 15 months after the enactment of the Safe Drinking Water Act Amendments of 1986, the Administrator shall amend such regulations to provide for different types and frequencies of notice based on the differences between violations which are intermittent or infrequent and violations which are continuous or frequent. Such regulations shall also take into account the seriousness of any potential adverse health effects which may be involved. Notice of any violation of a maximum contaminant level or any other violation designated by the Administrator as posing a serious potential adverse health effect shall be given as soon as possible, but in no case later than 14 days after the violation. Notice of a continuous violation of a regulation other than a maximum contaminant level shall be given no less frequently than every 3 months. Notice of violations judged to be less serious shall be given no less frequently than annually. The Administrator shall specify the types of notice to be used to provide information as promptly and effectively as possible taking into account both the seriousness of any potential adverse health effects and the likelihood of reaching all affected persons. Notification of violations shall include notice by general circulation newspaper serving the area and, whenever appropriate, shall also include a press release to electronic media and individual mailings. Notice under this subsection shall provide a clear and readily understandable explanation of the violation, any potential adverse health effects, the steps that the system is taking to correct such violation, and the necessity for seeking alternative water supplies, if any, until the violation is corrected. Until such amended regulations are promulgated, the regulations in effect on the date of the enactment of the Safe Drinking Water Act Amendments of 1986 shall remain in effect. The Administrator may also require the owner or operator of a public water system to give notice to the persons served by it of contaminant levels of any unregulated contaminant required to be monitored under section 1445(a). Any person who violates this subsection or regulations issued under this subsection shall be subject to a civil penalty of not to exceed $25,000.".

42 USC 300j-4.
Law enforcement and crime.

SEC. 104. VARIANCES.

Section 1415(a)(1)(A) of the Safe Drinking Water Act is amended as follows: 42 USC 300g-4.

(1) Strike the word "despite" and substitute a period and the following: "A variance may only be issued to a system after the system's".

(2) Strike the word "generally" before the word "available" and after "(taking costs into consideration)." insert the following: "The Administrator shall propose and promulgate his finding of the best available technology, treatment techniques or other means available for each contaminant for purposes of this subsection at the time he proposes and promulgates a maximum contaminant level for each such contaminant. The Administrator's finding of best available technology, treatment techniques or other means for purposes of this subsection may vary depending on the number of persons served by the system or for other physical conditions related to engineering feasibility and costs of compliance with maximum contaminant levels as considered appropriate by the Administrator.". Science and technology.

(3) Strike the words "within one year of the date" and adding "at the time".

(4) Add in clause (ii) after the words "water system of such" the word "additional".

SEC. 105. EXEMPTIONS.

(a) SCHEDULES.—Section 1416 of the Safe Drinking Water Act is amended as follows: 42 USC 300g-5.

(1) In subsection (b)(1) strike out the words "within one year of the date" and substitute "at the time".

(2) In subsection (b)(2)(A)(i) strike the word "interim" and strike the words "not later than January 1, 1984" and substitute "not later than 12 months after enactment of the Safe Drinking Water Act Amendments of 1986".

(3) In subsection (b)(2)(A)(ii) strike "revised" and strike "not later than 7 years after the date such requirement takes effect" and substitute "other than a regulation referred to in section 1412(a), 12 months after the date of the issuance of the exemption". 42 USC 300g-1.

(4) Subsection (b)(2)(B) is amended to read as follows:

"(B) The final date for compliance provided in any schedule in the case of any exemption may be extended by the State (in the case of a State which has primary enforcement responsibility) or by the Administrator (in any other case) for a period not to exceed 3 years after the date of the issuance of the exemption if the public water system establishes that— State and local governments.

"(i) the system cannot meet the standard without capital improvements which cannot be completed within the period of such exemption;

"(ii) in the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance; or Contracts.

"(iii) the system has entered into an enforceable agreement to become a part of a regional public water system; and Contracts.

the system is taking all practicable steps to meet the standard.

"(C) In the case of a system which does not serve more than 500 service connections and which needs financial assistance for the necessary improvements, an exemption granted under clause (i) or

(ii) of subparagraph (B) may be renewed for one or more additional 2-year periods if the system establishes that it is taking all practicable steps to meet the requirements of subparagraph (B).".

SEC. 106. MONITORING FOR UNREGULATED CONTAMINANTS.

42 USC 300j-4.

(a) SIZE OF SYSTEM.—Section 1445(a) of the Safe Drinking Water Act is amended by adding at the end thereof the following: "In requiring a public water system to monitor under this subsection, the Administrator may take into consideration the system size and the contaminants likely to be found in the system's drinking water.".

(b) MONITORING REQUIREMENTS.—Section 1445(a) of the Safe Drinking Water Act is amended by adding "(1)" after "(a)" and by adding the following at the end thereof:

Regulations.

"(2) Not later than 18 months after enactment of the Safe Drinking Water Act Amendments of 1986, the Administrator shall promulgate regulations requiring every public water system to conduct a monitoring program for unregulated contaminants. The regulations shall require monitoring of drinking water supplied by the system and shall vary the frequency and schedule of monitoring requirements for systems based on the number of persons served by the system, the source of supply, and the contaminants likely to be found. Each system shall be required to monitor at least once every 5 years after the effective date of the Administrator's regulations unless the Administrator requires more frequent monitoring.

State and local governments.

"(3) Regulations under paragraph (2) shall list unregulated contaminants for which systems may be required to monitor, and shall include criteria by which the primary enforcement authority in each State could show cause for addition or deletion of contaminants from the designated list. The primary State enforcement authority may delete contaminants for an individual system, in accordance with these criteria, after obtaining approval of assessment of the contaminants potentially to be found in the system. The Administrator shall approve or disapprove such an assessment submitted by a State within 60 days. A State may add contaminants, in accordance with these criteria, without making an assessment, but in no event shall such additions increase Federal expenditures authorized by this section.

"(4) Public water systems conducting monitoring of unregulated contaminants pursuant to this section shall provide the results of such monitoring to the primary enforcement authority.

"(5) Notification of the availability of the results of the monitoring programs required under paragraph (2), and notification of the availability of the results of the monitoring program referred to in paragraph (6), shall be given to the persons served by the system and the Administrator.

"(6) The Administrator may waive the monitoring requirement under paragraph (2) for a system which has conducted a monitoring program after January 1, 1983, if the Administrator determines the program to have been consistent with the regulations promulgated under this section.

"(7) Any system supplying less than 150 service connections shall be treated as complying with this subsection if such system provides water samples or the opportunity for sampling according to rules established by the Administrator.".

(c) CIVIL PENALTY.—Section 1445(c) of the Safe Drinking Water Act is amended by striking "may be fined not more than $5,000" and

inserting "shall be subject to a civil penalty of not to exceed $25,000".

SEC. 107. TECHNICAL ASSISTANCE FOR SMALL SYSTEMS.

Section 1442 of the Safe Drinking Water Act is amended by adding the following new subsection at the end thereof: 42 USC 300j-1.

"(g) The Administrator is authorized to provide technical assistance to small public water systems to enable such systems to achieve and maintain compliance with national drinking water regulations. Such assistance may include 'circuit-rider' programs, training, and preliminary engineering studies.".

SEC. 108. TAMPERING WITH PUBLIC WATER SYSTEMS.

Part D of the Safe Drinking Water Act is amended by adding the following new section after section 1431: 42 USC 300i *et seq.*

"SEC. 1432. TAMPERING WITH PUBLIC WATER SYSTEMS. Law enforcement and crime.

"(a) TAMPERING.—Any person who tampers with a public water system shall be imprisoned for not more than 5 years, or fined in accordance with title 18 of the United States Code, or both.

"(b) ATTEMPT OR THREAT.—Any person who attempts to tamper, or makes a threat to tamper, with a public drinking water system be imprisoned for not more than 3 years, or fined in accordance with title 18 of the United States Code, or both.

"(c) CIVIL PENALTY.—The Administrator may bring a civil action in the appropriate United States district court (as determined under the provisions of title 28 of the United States Code) against any person who tampers, attempts to tamper, or makes a threat to tamper with a public water system. The court may impose on such person a civil penalty of not more than $50,000 for such tampering or not more than $20,000 for such attempt or threat.

"(d) DEFINITION OF 'TAMPER'.—For purposes of this section, the term 'tamper' means—

"(1) to introduce a contaminant into a public water system with the intention of harming persons; or

"(2) to otherwise interfere with the operation of a public water system with the intention of harming persons.".

SEC. 109. LEAD FREE DRINKING WATER.

(a) SAFE DRINKING WATER ACT AMENDMENTS.—

(1) IN GENERAL.—Part B of the Safe Drinking Water Act is amended by adding the following new section at the end thereof: 42 USC 300g *et seq.*

"SEC. 1417. PROHIBITION ON USE OF LEAD PIPES, SOLDER, AND FLUX.

"(a) IN GENERAL.—

"(1) PROHIBITION.—Any pipe, solder, or flux, which is used after the enactment of the Safe Drinking Water Act Amendments of 1986, in the installation or repair of—

"(A) any public water system, or

"(B) any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system,

shall be lead free (within the meaning of subsection (d)). This paragraph shall not apply to leaded joints necessary for the repair of cast iron pipes.

"(2) PUBLIC NOTICE REQUIREMENTS.—

"(A) IN GENERAL.—Each public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

"(i) The lead content in the construction materials of the public water distribution system.

"(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

The notice shall be provided in such manner and form as may be reasonably required by the Administrator. Notice under this paragraph shall be provided notwithstanding the absence of a violation of any national drinking water standard.

"(B) CONTENTS OF NOTICE.—Notice under this paragraph shall provide a clear and readily understandable explanation of—

"(i) the potential sources of lead in the drinking water,

"(ii) potential adverse health effects,

"(iii) reasonably available methods of mitigating known or potential lead content in drinking water,

"(iv) any steps the system is taking to mitigate lead content in drinking water, and

"(v) the necessity for seeking alternative water supplies, if any.

Effective dates.

"(b) STATE ENFORCEMENT.—

"(1) ENFORCEMENT OF PROHIBITION.—The requirements of subsection (a)(1) shall be enforced in all States effective 24 months after the enactment of this section. States shall enforce such requirements through State or local plumbing codes, or such other means of enforcement as the State may determine to be appropriate.

"(2) ENFORCEMENT OF PUBLIC NOTICE REQUIREMENTS.—The requirements of subsection (a)(2) shall apply in all States effective 24 months after the enactment of this section.

State and local governments.

"(c) PENALTIES.—If the Administrator determines that a State is not enforcing the requirements of subsection (a) as required pursuant to subsection (b), the Administrator may withhold up to 5 percent of Federal funds available to that State for State program grants under section 1443(a).

42 USC 300j-2.

"(d) DEFINITION OF LEAD FREE.—For purposes of this section, the term 'lead free'—

"(1) when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead, and

"(2) when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead.".

42 USC 300g-6 note.

(b) NOTIFICATION TO STATES.—The Administrator of the Environmental Protection Agency shall notify all States with respect to the requirements of section 1417 of the Public Health Service Act within 90 days after the enactment of this Act.

Ante, p. 651.

42 USC 300g-6 note.

(c) BAN ON LEAD WATER PIPES, SOLDER, AND FLUX IN VA AND HUD INSURED OR ASSISTED PROPERTY.—

(1) PROHIBITION.—The Secretary of Housing and Urban Development and the Administrator of the Veterans' Administration may not insure or guarantee a mortgage or furnish assistance with respect to newly constructed residential property which

contains a potable water system unless such system uses only lead free pipe, solder, and flux.

(2) DEFINITION OF LEAD FREE.—For purposes of paragraph (1) the term "lead free"—

(A) when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead, and

(B) when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead.

(3) EFFECTIVE DATE.—Paragraph (1) shall become effective 24 months after the enactment of this Act.

(d) LEAD SOLDER AS A HAZARDOUS SUBSTANCE.—

(1) IN GENERAL.—Section 2(f)(1) of the Federal Hazardous Substances Act is amended by adding the following at the end thereof: 15 USC 1261.

"(E) Any solder which has a lead content in excess of 0.2 percent.".

(2) LABELING.—Section 4 of the Federal Hazardous Substances Act is amended by adding the following at the end thereof: 15 USC 1263. Commerce and trade.

"(k) The introduction or delivery for introduction into interstate commerce of any lead solder which has a lead content in excess of 0.2 percent which does not prominently display a warning label stating the lead content of the solder and warning that the use of such solder in the making of joints or fittings in any private or public potable water supply system is prohibited.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall become effective 24 months after the enactment of this Act. 15 USC 1263 note.

TITLE II—PROTECTION OF UNDERGROUND SOURCES OF DRINKING WATER

SEC. 201. RESTRICTIONS ON UNDERGROUND INJECTION OF HAZARDOUS WASTE AND REGULATION OF STATE PROGRAMS.

(a) NATURAL GAS STORAGE.—Section 1421(b)(2)(A), section 1422(c)(1), and section 1425(a)(1) of the Safe Drinking Water Act are each amended by inserting "or natural gas storage operations" after "production". 42 USC 300h, 300h-1, 300h-4.

(b) MONITORING OF INJECTION WELLS.—Part C of the Safe Drinking Water Act is amended by adding the following new section at the end thereof: 42 USC 300h *et seq.*

"SEC. 1426. REGULATION OF STATE PROGRAMS. 42 USC 300h-5.

"(a) MONITORING METHODS.—Not later than 18 months after enactment of the Safe Drinking Water Act Amendments of 1986, the Administrator shall modify regulations issued under this Act for Class I injection wells to identify monitoring methods, in addition to those in effect on November 1, 1985, including groundwater monitoring. In accordance with such regulations, the Administrator, or delegated State authority, shall determine the applicability of such monitoring methods, wherever appropriate, at locations and in such a manner as to provide the earliest possible detection of fluid migration into, or in the direction of, underground sources of drinking water from such wells, based on its assessment of the potential for fluid migration from the injection zone that may be harmful to human health or the environment. For purposes of this subsection, a Health and medical care. Environmental protection.

class I injection well is defined in accordance with 40 CFR 146.05 as in effect on November 1, 1985.

State and local governments.

"(b) REPORT.—The Administrator shall submit a report to Congress, no later than September 1987, summarizing the results of State surveys required by the Administrator under this section. The report shall include each of the following items of information:

"(1) The numbers and categories of class V wells which discharge nonhazardous waste into or above an underground source of drinking water.

"(2) The primary contamination problems associated with different categories of these disposal wells.

"(3) Recommendations for minimum design, construction, installation, and siting requirements that should be applied to protect underground sources of drinking water from such contamination wherever necessary.".

42 USC 6979a, 6972, 6973.

(c) SECTION 7010.—(1) Section 7010(c) of the Solid Waste Disposal Act is amended by striking "sections 7002 and 7003 of this Act" and inserting in lieu thereof "the provisions of this Act".

42 USC 6979b. 42 USC 6939a. 42 USC 6979a.

(2) Section 7010 of the Solid Waste Disposal Act is renumbered as section 3020 and inserted after section 3019 of such Act. Section 7012 of such Act is renumbered as section 7010. The item relating to section 7010 in the table of contents for such Act is renumbered as section 3020 and inserted after the item relating to section 3019. The item relating to section 7012 in the table of contents for such Act is renumbered as section 7010. Such table of contents is further amended by inserting after section 3015 the following new item:

"Sec. 3016. Inventory of Federal Agency hazardous waste facilities.".

SEC. 202. ENFORCEMENT.

State and local governments. 42 USC 300h-2.

(a) MANDATORY ENFORCEMENT.—(1) Section 1423(a)(1) of the Safe Drinking Water Act is amended by striking out all after the first sentence and substituting the following: "If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (c) requiring the person to comply with such requirement or the Administrator shall commence a civil action under subsection (b).".

(2) Section 1423(a)(2) of the Safe Drinking Water Act is amended by striking the words "he may commence a civil action under subsection (b)(1)" and substituting the following: "the Administrator shall issue an order under subsection (c) requiring the person to comply with such requirement or the Administrator shall commence a civil action under subsection (b).".

(b) CIVIL AND CRIMINAL ACTIONS.—Section 1423(b) of the Safe Drinking Water Act is amended to read as follows:

"(b) CIVIL AND CRIMINAL ACTIONS.—Civil actions referred to in paragraphs (1) and (2) of subsection (a) shall be brought in the appropriate United States district court. Such court shall have jurisdiction to require compliance with any requirement of an applicable underground injection program or with an order issued under subsection (c). The court may enter such judgment as protection of public health may require. Any person who violates any requirement of an applicable underground injection control program or an order requiring compliance under subsection (c)—

"(1) shall be subject to a civil penalty of not more than $25,000 for each day of such violation, and

"(2) if such violation is willful, such person may, in addition to or in lieu of the civil penalty authorized by paragraph (1), be imprisoned for not more than 3 years, or fined in accordance with title 18 of the United States Code, or both.".

(c) ADMINISTRATIVE ORDERS.—Section 1423 of the Safe Drinking Water Act is amended by inserting the following new subsection immediately after subsection (b) and by redesignating the succeeding subsection as subsection (d): 42 USC 300h-2.

"(c) ADMINISTRATIVE ORDERS.—(1) In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation or other requirement of this part other than those relating to— Petroleum and petroleum products. Natural gas.

"(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

"(B) any undergrcund injection for the secondary or tertiary recovery of oil or natural gas,

the Administrator may also issue an order under this subsection either assessing a civil penalty of not more than $10,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of $125,000, or requiring compliance with such regulation or other requirement, or both.

"(2) In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation, or other requirement of this part relating to—

"(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

"(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

the Administrator may also issue an order under this subsection either assessing a civil penalty of not more than $5,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of $125,000, or requiring compliance with such regulation or other requirement, or both.

"(3)(A) An order under this subsection shall be issued by the Administrator after opportunity (provided in accordance with this subparagraph) for a hearing. Before issuing the order, the Administrator shall give to the person to whom it is directed written notice of the Administrator's proposal to issue such order and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

"(B) The Administrator shall provide public notice of, and reasonable opportunity to comment on, any proposed order.

"(C) Any citizen who comments on any proposed order under subparagraph (B) shall be given notice of any hearing under this subsection and of any order. In any hearing held under subparagraph (A), such citizen shall have a reasonable opportunity to be heard and to present evidence.

"(D) Any order issued under this subsection shall become effective 30 days following its issuance unless an appeal is taken pursuant to paragraph (6). Effective date.

"(4)(A) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and may specify a reasonable time for compliance.

"(B) In assessing any civil penalty under this subsection, the Administrator shall take into account appropriate factors, including (i) the seriousness of the violation; (ii) the economic benefit (if any) resulting from the violation; (iii) any history of such violations; (iv) any good-faith efforts to comply with the applicable requirements; (v) the economic impact of the penalty on the violator; and (vi) such other matters as justice may require.

"(5) Any violation with respect to which the Administrator has commenced and is diligently prosecuting an action, or has issued an order under this subsection assessing a penalty, shall not be subject to an action under subsection (b) of this section or section 1424(c) or 1449, except that the foregoing limitation on civil actions under section 1449 of this Act shall not apply with respect to any violation for which—

42 USC 300h-3.
42 USC 300j-8.

"(A) a civil action under section 1449(a)(1) has been filed prior to commencement of an action under this subsection, or

"(B) a notice of violation under section 1449(b)(1) has been given before commencement of an action under this subsection and an action under section 1449(a)(1) of this Act is filed before 120 days after such notice is given.

"(6) Any person against whom an order is issued or who commented on a proposed order pursuant to paragraph (3) may file an appeal of such order with the United States District Court for the District of Columbia or the district in which the violation is alleged to have occurred. Such an appeal may only be filed within the 30-day period beginning on the date the order is issued. Appellant shall simultaneously send a copy of the appeal by certified mail to the Administrator and to the Attorney General. The Administrator shall promptly file in such court a certified copy of the record on which such order was imposed. The district court shall not set aside or remand such order unless there is not substantial evidence on the record, taken as a whole, to support the finding of a violation or, unless the Administrator's assessment of penalty or requirement for compliance constitutes an abuse of discretion. The district court shall not impose additional civil penalties for the same violation unless the Administrator's assessment of a penalty constitutes an abuse of discretion. Notwithstanding section 1448(a)(2), any order issued under paragraph (3) shall be subject to judicial review exclusively under this paragraph.

Records.

42 USC 300j-7.

"(7) If any person fails to pay an assessment of a civil penalty—

"(A) after the order becomes effective under paragraph (3), or

"(B) after a court, in an action brought under paragraph (6), has entered a final judgment in favor of the Administrator,

the Administrator may request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest at currently prevailing rates from the date the order is effective or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

"(8) The Administrator may, in connection with administrative proceedings under this subsection, issue subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce

any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanction.".

(d) CONFORMING AMENDMENT.—Section 1423 of the Safe Drinking Water Act is amended by striking the words "FAILURE OF STATE TO ASSURE" from the section heading. *Ante*, p. 655.

SEC. 203. SOLE SOURCE AQUIFER DEMONSTRATION PROGRAM.

Part C of the Safe Drinking Water Act is amended by adding the following new section after section 1426: 42 USC 300h *et seq.*

"SEC. 1427. SOLE SOURCE AQUIFER DEMONSTRATION PROGRAM. 42 USC 300h-6.

"(a) PURPOSE.—The purpose of this section is to establish procedures for development, implementation, and assessment of demonstration programs designed to protect critical aquifer protection areas located within areas designated as sole or principal source aquifers under section 1424(e) of this Act. 42 USC 300h-3.

"(b) DEFINITION.—For purposes of this section, the term 'critical aquifer protection area' means either of the following:

"(1) All or part of an area located within an area for which an application or designation as a sole or principal source aquifer pursuant to section 1424(e), has been submitted and approved by the Administrator not later than 24 months after the enactment of the Safe Drinking Water Act Amendments of 1986 and which satisfies the criteria established by the Administrator under subsection (d).

"(2) All or part of an area which is within an aquifer designated as a sole source aquifer as of the enactment of the Safe Drinking Water Act Amendments of 1986 and for which an areawide ground water quality protection plan has been approved under section 208 of the Clean Water Act prior to such enactment. 33 USC 1288.

"(c) APPLICATION.—Any State, municipal or local government or political subdivision thereof or any planning entity (including any interstate regional planning entity) that identifies a critical aquifer protection area over which it has authority or jurisdiction may apply to the Administrator for the selection of such area for a demonstration program under this section. Any applicant shall consult with other government or planning entities with authority or jurisdiction in such area prior to application. Applicants, other than the Governor, shall submit the application for a demonstration program jointly with the Governor. State and local governments.

"(d) CRITERIA.—Not later than 1 year after the enactment of the Safe Drinking Water Act Amendments of 1986, the Administrator shall, by rule, establish criteria for identifying critical aquifer protection areas under this section. In establishing such criteria, the Administrator shall consider each of the following:

"(1) The vulnerability of the aquifer to contamination due to hydrogeologic characteristics.

"(2) The number of persons or the proportion of population using the ground water as a drinking water source.

"(3) The economic, social and environmental benefits that would result to the area from maintenance of ground water of high quality.

"(4) The economic, social and environmental costs that would result from degradation of the quality of the ground water.

"(e) CONTENTS OF APPLICATION.—An application submitted to the Administrator by any applicant for a demonstration program under this section shall meet each of the following requirements:

"(1) The application shall propose boundaries for the critical aquifer protection area within its jurisdiction.

State and local governments.

"(2) The application shall designate or, if necessary, establish a planning entity (which shall be a public agency and which shall include representation of elected local and State governmental officials) to develop a comprehensive management plan (hereinafter in this section referred to as the 'plan') for the critical protection area. Where a local government planning agency exists with adequate authority to carry out this section with respect to any proposed critical protection area, such agency shall be designated as the planning entity.

State and local governments.

"(3) The application shall establish procedures for public participation in the development of the plan, for review, approval, and adoption of the plan, and for assistance to municipalities and other public agencies with authority under State law to implement the plan.

"(4) The application shall include a hydrogeologic assessment of surface and ground water resources within the critical protection area.

"(5) The application shall include a comprehensive management plan for the proposed protection area.

"(6) The application shall include the measures and schedule proposed for implementation of such plan.

"(f) COMPREHENSIVE PLAN.—

"(1) The objective of a comprehensive management plan submitted by an applicant under this section shall be to maintain the quality of the ground water in the critical protection area in a manner reasonably expected to protect human health, the environment and ground water resources. In order to achieve such objective, the plan may be designed to maintain, to the maximum extent possible, the natural vegetative and hydrogeological conditions. Each of the following elements shall be included in such a protection plan:

"(A) A map showing the detailed boundary of the critical protection area.

"(B) An identification of existing and potential point and nonpoint sources of ground water degradation.

"(C) An assessment of the relationship between activities on the land surface and ground water quality.

"(D) Specific actions and management practices to be implemented in the critical protection area to prevent adverse impacts on ground water quality.

"(E) Identification of authority adequate to implement the plan, estimates of program costs, and sources of State matching funds.

"(2) Such plan may also include the following:

"(A) A determination of the quality of the existing ground water recharged through the special protection area and the natural recharge capabilities of the special protection area watershed.

"(B) Requirements designed to maintain existing underground drinking water quality or improve underground drinking water quality if prevailing conditions fail to meet

drinking water standards, pursuant to this Act and State law.

"(C) Limits on Federal, State, and local government, financially assisted activities and projects which may contribute to degradation of such ground water or any loss of natural surface and subsurface infiltration of purification capability of the special protection watershed. State and local governments.

"(D) A comprehensive statement of land use management including emergency contingency planning as it pertains to the maintenance of the quality of underground sources of drinking water or to the improvement of such sources if necessary to meet drinking water standards pursuant to this Act and State law.

"(E) Actions in the special protection area which would avoid adverse impacts on water quality, recharge capabilities, or both.

"(F) Consideration of specific techniques, which may include clustering, transfer of development rights, and other innovative measures sufficient to achieve the objectives of this section.

"(G) Consideration of the establishment of a State institution to facilitate and assist funding a development transfer credit system. State and local governments.

"(H) A program for State and local implementation of the plan described in this subsection in a manner that will insure the continued, uniform, consistent protection of the critical protection area in accord with the purposes of this section. State and local governments.

"(I) Pollution abatement measures, if appropriate.

"(g) PLANS UNDER SECTION 208 OF THE CLEAN WATER ACT.—A plan approved before the enactment of the Safe Drinking Water Act Amendments of 1986 under section 208 of the Clean Water Act to protect a sole source aquifer designated under section 1424(e) of this Act shall be considered a comprehensive management plan for the purposes of this section. 33 USC 1288. 42 USC 300h-3.

"(h) CONSULTATION AND HEARINGS.—During the development of a comprehensive management plan under this section, the planning entity shall consult with, and consider the comments of, appropriate officials of any municipality and State or Federal agency which has jurisdiction over lands and waters within the special protection area, other concerned organizations and technical and citizen advisory committees. The planning entity shall conduct public hearings at places within the special protection area for the purpose of providing the opportunity to comment on any aspect of the plan. State and local governments.

"(i) APPROVAL OR DISAPPROVAL.—Within 120 days after receipt of an application under this section, the Administrator shall approve or disapprove the application. The approval or disapproval shall be based on a determination that the critical protection area satisfies the criteria established under subsection (d) and that a demonstration program for the area would provide protection for ground water quality consistent with the objectives stated in subsection (f). The Administrator shall provide to the Governor a written explanation of the reasons for the disapproval of any such application. Any petitioner may modify and resubmit any application which is not approved. Upon approval of an application, the Administrator may enter into a cooperative agreement with the applicant to establish a demonstration program under this section. Contracts.

Contracts.

"(j) GRANTS AND REIMBURSEMENT.—Upon entering a cooperative agreement under subsection (i), the Administrator may provide to the applicant, on a matching basis, a grant of 50 per centum of the costs of implementing the plan established under this section. The Administrator may also reimburse the applicant of an approved plan up to 50 per centum of the costs of developing such plan, except for plans approved under section 208 of the Clean Water Act. The total amount of grants under this section for any one aquifer, designated under section 1424(e), shall not exceed $4,000,000 in any one fiscal year.

33 USC 1288.

42 USC 300h-3.

"(k) ACTIVITIES FUNDED UNDER OTHER LAW.—No funds authorized under this subsection may be used to fund activities funded under other sections of this Act or the Clean Water Act, the Solid Waste Disposal Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or other environmental laws.

33 USC 1251 note. 42 USC 6901 note. 42 USC 9601 note.

"(l) REPORT.—Not later than December 31, 1989, each State shall submit to the Administrator a report assessing the impact of the program on ground water quality and identifying those measures found to be effective in protecting ground water resources. No later than September 30, 1990, the Administrator shall submit to Congress a report summarizing the State reports, and assessing the accomplishments of the sole source aquifer demonstration program including an identification of protection methods found to be most effective and recommendations for their application to protect ground water resources from contamination whenever necessary.

State and local governments.

Compacts between States. State and local governments.

"(m) SAVINGS PROVISION.—Nothing under this section shall be construed to amend, supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws; or any requirement imposed or right provided under any Federal or State environmental or public health statute.".

SEC. 204. EMERGENCY POWERS.

42 USC 300i.

Section 1431 of the Safe Drinking Water Act is amended as follows:

(1) In the first sentence of subsection (a) add the words "or an underground source of drinking water" after the words "to enter a public water system".

(2) In the last sentence of subsection (a) add "including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment," after the words "including travelers),".

(3) In subsection (b):

(A) Strike "willfully".

(B) Strike "fined not more than" and insert in lieu thereof "subject to a civil penalty of not to exceed".

SEC. 205. STATE PROGRAMS TO ESTABLISH WELLHEAD PROTECTION AREAS.

42 USC 300f note.

The Safe Drinking Water Act is amended by adding the following new section after section 1427, as added by section 203 of this Act:

42 USC 300h-7.

"SEC. 1428. STATE PROGRAMS TO ESTABLISH WELLHEAD PROTECTION AREAS.

"(a) STATE PROGRAMS.—The Governor or Governor's designee of each State shall, within 3 years of the date of enactment of the Safe Drinking Water Act Amendments of 1986, adopt and submit to the

Administrator a State program to protect wellhead areas within their jurisdiction from contaminants which may have any adverse effect on the health of persons. Each State program under this section shall, at a minimum—

"(1) specify the duties of State agencies, local governmental entities, and public water supply systems with respect to the development and implementation of programs required by this section;

"(2) for each wellhead, determine the wellhead protection area as defined in subsection (e) based on all reasonably available hydrogeologic information on ground water flow, recharge and discharge and other information the State deems necessary to adequately determine the wellhead protection area;

"(3) identify within each wellhead protection area all potential anthropogenic sources of contaminants which may have any adverse effect on the health of persons;

"(4) describe a program that contains, as appropriate, technical assistance, financial assistance, implementation of control measures, education, training, and demonstration projects to protect the water supply within wellhead protection areas from such contaminants;

"(5) include contingency plans for the location and provision of alternate drinking water supplies for each public water system in the event of well or wellfield contamination by such contaminants; and

"(6) include a requirement that consideration be given to all potential sources of such contaminants within the expected wellhead area of a new water well which serves a public water supply system.

"(b) PUBLIC PARTICIPATION.—To the maximum extent possible, each State shall establish procedures, including but not limited to the establishment of technical and citizens' advisory committees, to encourage the public to participate in developing the protection program for wellhead areas. Such procedures shall include notice and opportunity for public hearing on the State program before it is submitted to the Administrator.

"(c) DISAPPROVAL.—

"(1) IN GENERAL.—If, in the judgment of the Administrator, a State program (or portion thereof, including the definition of a wellhead protection area), is not adequate to protect public water systems as required by this section, the Administrator shall disapprove such program (or portion thereof). A State program developed pursuant to subsection (a) shall be deemed to be adequate unless the Administrator determines, within 9 months of the receipt of a State program, that such program (or portion thereof) is inadequate for the purpose of protecting public water systems as required by this section from contaminants that may have any adverse effect on the health of persons. If the Administrator determines that a proposed State program (or any portion thereof) is inadequate, the Administrator shall submit a written statement of the reasons for such determination to the Governor of the State.

"(2) MODIFICATION AND RESUBMISSION.—Within 6 months after receipt of the Administrator's written notice under paragraph (1) that any proposed State program (or portion thereof) is inadequate, the Governor or Governor's designee, shall modify

the program based upon the recommendations of the Administrator and resubmit the modified program to the Administrator.

"(d) FEDERAL ASSISTANCE.—After the date 3 years after the enactment of this section, no State shall receive funds authorized to be appropriated under this section except for the purpose of implementing the program and requirements of paragraphs (4) and (6) of subsection (a).

"(e) DEFINITION OF WELLHEAD PROTECTION AREA.—As used in this section, the term 'wellhead protection area' means the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield. The extent of a wellhead protection area, within a State, necessary to provide protection from contaminants which may have any adverse effect on the health of persons is to be determined by the State in the program submitted under subsection (a). Not later than one year after the enactment of the Safe Drinking Water Act Amendments of 1986, the Administrator shall issue technical guidance which States may use in making such determinations. Such guidance may reflect such factors as the radius of influence around a well or wellfield, the depth of drawdown of the water table by such well or wellfield at any given point, the time or rate of travel of various contaminants in various hydrologic conditions, distance from the well or wellfield, or other factors affecting the likelihood of contaminants reaching the well or wellfield, taking into account available engineering pump tests or comparable data, field reconnaissance, topographic information, and the geology of the formation in which the well or wellfield is located.

"(f) PROHIBITIONS.—

"(1) ACTIVITIES UNDER OTHER LAWS.—No funds authorized to be appropriated under this section may be used to support activities authorized by the Federal Water Pollution Control Act, the Solid Waste Disposal Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or other sections of this Act.

33 USC 1251 note.
42 USC 6901 note.
42 USC 9601 note.

"(2) INDIVIDUAL SOURCES.—No funds authorized to be appropriated under this section may be used to bring individual sources of contamination into compliance.

Report.

"(g) IMPLEMENTATION.—Each State shall make every reasonable effort to implement the State wellhead area protection program under this section within 2 years of submitting the program to the Administrator. Each State shall submit to the Administrator a biennial status report describing the State's progress in implementing the program. Such report shall include amendments to the State program for water wells sited during the biennial period.

"(h) FEDERAL AGENCIES.—Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any potential source of contaminants identified by a State program pursuant to the provisions of subsection (a)(3) shall be subject to and comply with all requirements of the State program developed according to subsection (a)(4) applicable to such potential source of contaminants, both substantive and procedural, in the same manner, and to the same extent, as any other person is subject to such requirements, including payment of reasonable charges and fees. The President may exempt any potential source under the jurisdiction of any department, agency, or instrumentality in the executive branch if

President of U.S.

the President determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to the lack of an appropriation unless the President shall have specifically requested such appropriation as part of the budgetary process and the Congress shall have failed to make available such requested appropriations.

"(i) ADDITIONAL REQUIREMENT.—

"(1) IN GENERAL.—In addition to the provisions of subsection (a) of this section, States in which there are more than 2,500 active wells at which annular injection is used as of January 1, 1986, shall include in their State program a certification that a State program exists and is being adequately enforced that provides protection from contaminants which may have any adverse effect on the health of persons and which are associated with the annular injection or surface disposal of brines associated with oil and gas production.

Health and medical care. Petroleum and petroleum products. Natural gas.

"(2) DEFINITION.—For purposes of this subsection, the term 'annular injection' means the reinjection of brines associated with the production of oil or gas between the production and surface casings of a conventional oil or gas producing well.

"(3) REVIEW.—The Administrator shall conduct a review of each program certified under this subsection.

"(4) DISAPPROVAL.—If a State fails to include the certification required by this subsection or if in the judgment of the Administrator the State program certified under this subsection is not being adequately enforced, the Administrator shall disapprove the State program submitted under subsection (a) of this section.

"(j) COORDINATION WITH OTHER LAWS.—Nothing in this section shall authorize or require any department, agency, or other instrumentality of the Federal Government or State or local government to apportion, allocate or otherwise regulate the withdrawal or beneficial use of ground or surface waters, so as to abrogate or modify any existing rights to water established pursuant to State or Federal law, including interstate compacts.".

TITLE III—GENERAL PROVISIONS

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

(a) TECHNICAL ASSISTANCE AND EMERGENCY GRANTS.—Section 1442(f) of the Safe Drinking Water Act is amended by inserting the following at the end thereof: "There are authorized to be appropriated to carry out subsection (a)(2)(B) not more than the following amounts:

42 USC 300j-1.

"Fiscal year:	*Amount*
1987	$7,650,000
1988	7,650,000
1989	8,050,000
1990	8,050,000
1991	8,050,000

There are authorized to be appropriated to carry out the provisions of this section (other than subsection (g), subsection (a)(2)(B), and provisions relating to research), not more than the following amounts:

"Fiscal year:	*Amount*
1987	$35,600,000
1988	35,600,000

1989	38,020,000
1990	38,020,000
1991	38,020,000".

42 USC 300j-2.

(b) STATE SUPERVISION PROGRAMS.—Section 1443(a)(7) of the Safe Drinking Water Act is amended by adding at the end thereof: "For the purposes of making grants under paragraph (1) there are authorized to be appropriated not more than the following amounts:

"Fiscal year:	*Amount*
1987	$37,200,000
1988	37,200,000
1989	40,150,000
1990	40,150,000
1991	40,150,000".

(c) UNDERGROUND WATER SOURCE PROTECTION PROGRAM.—Section 1443(b)(5) of the Safe Drinking Water Act is amended by adding the following at the end thereof: "For the purpose of making grants under paragraph (1) there are authorized to be appropriated not more than the following amounts:

"Fiscal year:	*Amount*
1987	$19,700,000
1988	19,700,000
1989	20,850,000
1990	20,850,000
1991	20,850,000".

42 USC 300j.

(d) EXTENSION OF AUTHORITY.—Section 1441(f) of the Safe Drinking Water Act is amended by striking out "in effect" and all that follows and substituting "in effect for more than one year".

(e) PROTECTION OF WELLHEAD AREAS.—Section 1428 of the Safe Drinking Water Act, as added by section 205 of this Act, is amended by adding the following new subsection at the end thereof:

Grants.
State and local governments.

"(k) AUTHORIZATION OF APPROPRIATIONS.—Unless the State program is disapproved under this section, the Administrator shall make grants to the State for not less than 50 or more than 90 percent of the costs incurred by a State (as determined by the Administrator) in developing and implementing each State program under this section. For purposes of making such grants there is authorized to be appropriated not more than the following amounts:

"Fiscal year:	*Amount*
1987	$20,000,000
1988	20,000,000
1989	35,000,000
1990	35,000,000
1991	35,000,000"

Ante, p. 657.

(f) PROTECTION OF SOLE OR PRINCIPAL SOURCE GROUND WATER RECHARGE AREAS.—Section 1427 of the Safe Drinking Water Act, as added by this Act, is amended by adding the following new subsection at the end thereof:

"(n) AUTHORIZATION.—There are authorized to be appropriated to carry out this section not more than the following amounts:

"Fiscal year:	*Amount*
1987	$10,000,000
1988	15,000,000
1989	17,500,000
1990	17,500,000
1991	17,500,000

Grants.

Matching grants under this section may also be used to implement or update any water quality management plan for a sole or principal source aquifer approved (before the date of the enactment of this

section) by the Administrator under section 208 of the Federal Water Pollution Control Act.". 33 USC 1288.

(g) TECHNICAL ASSISTANCE FOR SMALL SYSTEMS.—Section 1442(g) of the Safe Drinking Water Act, as added by section 107 of this Act, is amended by adding the following at the end thereof: "There are authorized to be appropriated to carry out this subsection $10,000,000 for each of the fiscal years 1987 through 1991. Not less than the greater of—

"(1) 3 percent of the amounts appropriated under this subsection, or

"(2) $280,000

Indians.

shall be utilized for technical assistance to public water systems owned or operated by Indian tribes.".

(h) MONITORING FOR UNREGULATED CONTAMINANTS.—Section 1445(a) of the Safe Drinking Water Act, as amended by section 106 of this Act, is further amended by adding the following new paragraph at the end thereof:

"(8) There are authorized to be appropriated $30,000,000 in the fiscal year ending September 30, 1987 to remain available until expended to carry out the provisions of this subsection.".

SEC. 302. INDIAN TRIBES.

(a) IN GENERAL.—Part E of the Safe Drinking Water Act is amended by adding the following new section after section 1450: 42 USC 300j *et seq.*

"SEC. 1451. INDIAN TRIBES. 42 USC 300j-11.

"(a) IN GENERAL.—Subject to the provisions of subsection (b), the Administrator—

"(1) is authorized to treat Indian Tribes as States under this title,

"(2) may delegate to such Tribes primary enforcement responsibility for public water systems and for underground injection control, and

"(3) may provide such Tribes grant and contract assistance to carry out functions provided by this title.

Grants.
Contracts.

"(b) EPA REGULATIONS.—

"(1) SPECIFIC PROVISIONS.—The Administrator shall, within 18 months after the enactment of the Safe Drinking Water Act Amendments of 1986, promulgate final regulations specifying those provisions of this title for which it is appropriate to treat Indian Tribes as States. Such treatment shall be authorized only if:

"(A) the Indian Tribe is recognized by the Secretary of the Interior and has a governing body carrying out substantial governmental duties and powers;

"(B) the functions to be exercised by the Indian Tribe are within the area of the Tribal Government's jurisdiction; and

"(C) the Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this title and of all applicable regulations.

"(2) PROVISIONS WHERE TREATMENT AS STATE INAPPROPRIATE.—For any provision of this title where treatment of Indian Tribes as identical to States is inappropriate, administratively infeasible or otherwise inconsistent with the purposes of this title, the

Administrator may include in the regulations promulgated under this section, other means for administering such provision in a manner that will achieve the purpose of the provision. Nothing in this section shall be construed to allow Indian Tribes to assume or maintain primary enforcement responsibility for public water systems or for underground injection control in a manner less protective of the health of persons than such responsibility may be assumed or maintained by a State. An Indian tribe shall not be required to exercise criminal enforcement jurisdiction for purposes of complying with the preceding sentence.".

Health and medical care.

(b) DEFINITIONS.—

42 USC 300f.

(1) INDIAN TRIBE.—Section 1401 of such Act is amended by inserting the following at the end thereof:

"(14) The term 'Indian Tribe' means any Indian tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over any area.".

(2) MUNICIPALITY.—Section 1401 of such Act is amended by striking out from paragraph (10) the words "Indian tribal organization authorized by law" and substituting "Indian Tribe".

42 USC 300h-1.

(c) PRIMARY ENFORCEMENT RESPONSIBILITY.—Section 1422 of such Act is amended by adding the following new subsection at the end thereof:

"(e) An Indian Tribe may assume primary enforcement responsibility for underground injection control under this section consistent with such regulations as the Administrator has prescribed pursuant to Part C and section 1451 of this Act. The area over which such Indian Tribe exercises governmental jurisdiction need not have been listed under subsection (a) of this section, and such Tribe need not submit an application to assume primary enforcement responsibility within the 270-day deadline noted in subsection (b)(1)(A) of this section. Until an Indian Tribe assumes primary enforcement responsibility, the currently applicable underground injection control program shall continue to apply. If an applicable underground injection control program does not exist for an Indian Tribe, the Administrator shall prescribe such a program pursuant to subsection (c) of this section, and consistent with section 1421(b), within 270 days after the enactment of the Safe Drinking Water Act Amendments of 1986, unless an Indian Tribe first obtains approval to assume primary enforcement responsibility for underground injection control.".

42 USC 300h *et seq.*; *ante*, p. 665.

42 USC 300h.

42 USC 300j-2.

(d) GRANTS.—(1) Section 1443(a)(2) of the Safe Drinking Water Act is amended by adding the following at the end thereof: "The prohibitions contained in the preceding two sentences shall not apply to such grants when made to Indian Tribes.".

(2) Section 1443(b)(2) of such Act is amended by adding the following new sentence at the end thereof: "The prohibition contained in the preceding sentence shall not apply to such grants when made to Indian Tribes.".

(e) STUDY.—The Administrator of the Environmental Protection Agency, in cooperation with the Director of the Indian Health Service, shall, within 12 months after the enactment of this Act, conduct a survey of drinking water on Indian reservations, identifying drinking water problems and the need, if any, for alternative drinking water supplies.

SEC. 303. JUDICIAL REVIEW.

Section 1448(a) of the Safe Drinking Water Act is amended as follows: 42 USC 300j-7.

(1) Amend paragraph (1) to read as follows:

"(1) actions pertaining to the establishment of national primary drinking water regulations (including maximum contaminant level goals) may be filed only in the United States Court of Appeals for the District of Columbia circuit; and".

(2) Amend paragraph (2) to read as follows:

"(2) any other action of the Administrator under this Act may be filed in the circuit in which the petitioner resides or transacts business which is directly affected by the action.".

SEC. 304. MISCELLANEOUS PROVISIONS.

(a) REPEAL.—Section 1442(e) of the Safe Drinking Water Act is repealed. 42 USC 300j-1.

(b) COMPARATIVE HEALTH EFFECTS ASSESSMENT.—The Administrator of the Environmental Protection Agency shall conduct a comparative health effects assessment, using available data, to compare the public health effects (both positive and negative) associated with water treatment chemicals and their byproducts to the public health effects associated with contaminants found in public water supplies. Not later than 18 months after the date of the enactment of this Act, the Administrator shall submit a report to the Congress setting forth the results of such assessment. 42 USC 300j-1 note. Report.

Approved June 19, 1986.

LEGISLATIVE HISTORY—S. 124 (H.R. 1650):

HOUSE REPORTS No. 99-168 accompanying H.R. 1650 (Comm. on Energy and Commerce) and No. 99-575 (Comm. of Conference).
SENATE REPORT No. 99-56 (Comm. on Environmental and Public Works).
CONGRESSIONAL RECORD:
Vol. 131 (1985): May 16, considered and passed Senate.
June 17, H.R. 1650 considered and passed House; proceedings vacated and S. 124, amended, passed in lieu.
Vol. 132 (1986): May 13, House agreed to conference report.
May 21, Senate agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 22, No. 25 (1986):
June 19, Presidential statement.

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